



February 2, 2007

HOUSE BILL No. 1291

DIGEST OF HB 1291 (Updated January 31, 2007 4:26 pm - DI 69)

Citations Affected: IC 33-39.

Synopsis: Appointment of special prosecutors. Requires a court to appoint a special prosecutor if: (1) a previously appointed special prosecutor files a motion to withdraw as special prosecutor or has become incapable of continuing to represent the interests of the state; and (2) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist. Makes numerous changes to the law concerning the compensation of special prosecutors.

Effective: July 1, 2007.

Van Haaften, Thomas

January 11, 2007, read first time and referred to Committee on Courts and Criminal Code.
February 1, 2007, amended, reported — Do Pass.

C
o
p
y

HB 1291—LS 6651/DI 107+



February 2, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1291

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-39-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) As used in this
3 chapter, "senior prosecuting attorney" means a person who:

4 (1) was employed for at least eight (8) years as a prosecuting
5 attorney or chief deputy prosecuting attorney; and

6 (2) files an affidavit requesting designation as a senior
7 prosecuting attorney in the circuit court **and each superior court**
8 in a county in which the person is willing to serve as a senior
9 prosecuting attorney.

10 (b) An affidavit filed under subsection (a) must contain the
11 following:

12 (1) The name of the person filing the affidavit.

13 (2) The person's attorney number issued by the supreme court.

14 (3) The length of time the person served as a chief deputy
15 prosecuting attorney or prosecuting attorney.

16 (4) The name of any county in which the person served as a chief
17 deputy prosecuting attorney or prosecuting attorney.

HB 1291—LS 6651/DI 107+



C
o
p
y

(c) The circuit **or superior** court shall promptly forward each affidavit received under this section to the prosecuting attorneys council of Indiana.

SECTION 2. IC 33-39-1-6, AS AMENDED BY P.L.222-2005, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) Special prosecutors may be appointed under this section or in accordance with IC 4-2-7-7.

(b) A circuit or superior court judge:

(1) shall appoint a special prosecutor if:

(A) any person other than the prosecuting attorney or the prosecuting attorney's deputy files a verified petition requesting the appointment of a special prosecutor; and

(B) the prosecuting attorney agrees that a special prosecutor is needed;

(2) may appoint a special prosecutor if:

(A) a person files a verified petition requesting the appointment of a special prosecutor; and

(B) the court, after:

(i) notice is given to the prosecuting attorney; and

(ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard; finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecutor has committed a crime;

(3) may appoint a special prosecutor if:

(A) the prosecuting attorney files a petition requesting the court to appoint a special prosecutor; and

(B) the court finds that the appointment is necessary to avoid the appearance of impropriety; ~~and~~

(4) may appoint a special prosecutor if:

(A) an elected public official, who is a defendant in a criminal proceeding, files a verified petition requesting a special prosecutor within ten (10) days after the date of the initial hearing; and

(B) the court finds that the appointment of a special prosecutor is in the best interests of justice; **and**

(5) shall appoint a special prosecutor if:

(A) a previously appointed special prosecutor:

(i) files a motion to withdraw as special prosecutor; or

(ii) has become incapable of continuing to represent the interests of the state; and

**C
O
P
Y**



(B) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist.

The elected prosecuting attorney of the appointing jurisdiction shall receive notice of all pleadings filed and orders issued under this subdivision.

(c) Each person appointed to serve as a special prosecutor:

- (1) must consent to the appointment; and
- (2) must be:

(A) the prosecuting attorney or a deputy prosecuting attorney in a county other than the county in which the person is to serve as special prosecutor; or

(B) except as provided in subsection (d), a senior prosecuting attorney.

(d) A senior prosecuting attorney may be appointed in the county in which the senior prosecuting attorney previously served if the court finds that an appointment under this subsection would not create the appearance of impropriety.

(e) A person appointed to serve as a special prosecutor has the same powers as the prosecuting attorney of the county. However, the appointing judge shall limit scope of the special prosecutor's duties to include only the investigation or prosecution of a particular case or particular grand jury investigation.

(f) The court shall establish the length of the special prosecutor's term. If the target of an investigation by the special prosecutor is a public servant (as defined in IC 35-41-1-24), the court shall order the special prosecutor to file a report of the investigation with the court at the conclusion of the investigation. The report is a public record.

(g) If the special prosecutor is not regularly employed as a full-time prosecuting attorney or full-time deputy prosecuting attorney, the compensation for the special prosecutor's services:

- (1) shall be paid to the special prosecutor from the unappropriated funds of the appointing county; and
- (2) may not exceed:

(A) ~~a per diem equal to an hourly rate based upon the regular salary of a full-time prosecuting attorney of the appointing circuit; and~~

(B) travel expenses and reasonable accommodation expenses actually incurred; **and**

(C) other reasonable expenses actually incurred, including the costs of investigation, discovery, and secretarial work, if:

**C
o
p
y**



- 1 (i) the special prosecutor submits an application to the
 2 court to receive the other reasonable expenses; and
 3 (ii) the court approves the expenses.

4 **The amount of compensation a special prosecutor receives for**
 5 **services performed during a calendar day under subdivision (2)(A)**
 6 **may not exceed the amount of compensation a full-time**
 7 **prosecuting attorney would receive in salary for the calendar day.**

8 (h) If the special prosecutor is regularly employed as a full-time
 9 prosecuting attorney or deputy prosecuting attorney, the compensation
 10 for the special prosecutor's services:

11 (1) shall be paid out of the appointing county's unappropriated
 12 funds to the treasurer of the county in which the special
 13 prosecutor regularly serves; and

14 (2) must include a per diem equal to the regular salary of a
 15 full-time prosecuting attorney of the appointing circuit, travel
 16 expenses, and reasonable accommodation expenses actually
 17 incurred.

18 (i) The combination of:

19 (1) the compensation paid to a senior prosecuting attorney under
 20 this chapter; and

21 (2) retirement benefits that the person appointed as a senior
 22 prosecuting attorney is receiving or entitled to receive;
 23 may not exceed the minimum compensation to which a full-time
 24 prosecuting attorney is entitled under IC 33-39-6-5.

25 (j) A senior prosecuting attorney appointed under this chapter may
 26 not be compensated as senior prosecuting attorney for more than one
 27 hundred (100) calendar days in total during a calendar year **if the**
 28 **senior prosecuting attorney receives retirement benefits during the**
 29 **calendar year. However, if the senior prosecuting attorney does not**
 30 **receive retirement benefits during a calendar year, the senior**
 31 **prosecuting attorney may be compensated as a senior prosecuting**
 32 **attorney for not more than two hundred (200) calendar days in**
 33 **total during the calendar year.**

C
o
p
y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1291, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 33-39-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) As used in this chapter, "senior prosecuting attorney" means a person who:

- (1) was employed for at least eight (8) years as a prosecuting attorney or chief deputy prosecuting attorney; and
- (2) files an affidavit requesting designation as a senior prosecuting attorney in the circuit court **and each superior court** in a county in which the person is willing to serve as a senior prosecuting attorney.

(b) An affidavit filed under subsection (a) must contain the following:

- (1) The name of the person filing the affidavit.
- (2) The person's attorney number issued by the supreme court.
- (3) The length of time the person served as a chief deputy prosecuting attorney or prosecuting attorney.
- (4) The name of any county in which the person served as a chief deputy prosecuting attorney or prosecuting attorney.

(c) The circuit **or superior** court shall promptly forward each affidavit received under this section to the prosecuting attorneys council of Indiana."

Page 2, delete lines 18 through 29, begin a new line block indented and insert:

"(5) shall appoint a special prosecutor if:

(A) a previously appointed special prosecutor:

- (i) files a motion to withdraw as special prosecutor; or**
- (ii) has become incapable of continuing to represent the interests of the state; and**

(B) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist.

The elected prosecuting attorney of the appointing jurisdiction shall receive notice of all pleadings filed and orders issued under this subdivision."

Page 3, line 16, strike "a per diem equal to" and insert **"an hourly rate based upon"**.

C
o
p
y



Page 3, line 17, strike "and".

Page 3, line 19, delete "." and insert "; and

(C) other reasonable expenses actually incurred, including the costs of investigation, discovery, and secretarial work, if:

(i) the special prosecutor submits an application to the court to receive the other reasonable expenses; and

(ii) the court approves the expenses.

The amount of compensation a special prosecutor receives for services performed during a calendar day under subdivision (2)(A) may not exceed the amount of compensation a full-time prosecuting attorney would receive in salary for the calendar day."

Page 3, line 39, delete "." and insert **"if the senior prosecuting attorney receives retirement benefits during the calendar year. However, if the senior prosecuting attorney does not receive retirement benefits during a calendar year, the senior prosecuting attorney may be compensated as a senior prosecuting attorney for not more than two hundred (200) calendar days in total during the calendar year."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1291 as introduced.)

HOY, Chair

Committee Vote: yeas 11, nays 0.

**C
o
p
y**

